

part, (1) the record shall be amended within the time limits prescribed in § 70a.6 of this part, and, in no event, is the record to be disclosed to any party until the amendments are so incorporated; (2) the requester shall be informed that the record has been so amended, and the record shall be made available for his or her review within the time limits prescribed in § 70a.6 of this part, and (3) all prior recipients of the record, of which an accounting is required to be kept, shall be notified as soon as possible of the amendments made to the record.

(c) Where it is determined that the request is to be denied, in whole or in part, the requester shall be so notified in accordance with § 70a.6(c) of this part.

§ 70a.9 Procedures for appeal from initial adverse determination.

(a) *Time within which appeal must be filed.* An applicant whose request for access, copying, amendment or correction of a record has been denied pursuant to this part may file an appeal within 90 days from the date of the denial to the Solicitor of Labor. The appeal shall state, in writing, the grounds for appeal and shall include any supporting statements or arguments. The appeal shall be addressed to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. To expedite the processing of the appeal, each such appeal should clearly indicate on the envelope and on the appeal the following: "Privacy Act: Appeal."

(b) *Receipt by Solicitor of appeal; acknowledgment.* Each appeal when received by the Solicitor, shall have the date and time of such receipt inscribed thereon. The Solicitor shall acknowledge the receipt of such appeal in writing.

(c) *Action on appeal.* (1) Action on an appeal shall be taken promptly subsequent to receipt by the Solicitor, and a determination shall be made within 30 working days from receipt thereof. Where the Solicitor determines that a decision cannot be made within the 30-day period, the appellant shall be so notified, however, a decision shall be rendered within 40 days of the initial receipt of the appeal.

(2) On appeal, the Solicitor is authorized to determine de novo, whether the denial of appellant's initial request was proper and in accord with the applicable provisions of the statute and the pertinent regulations. In the event that the denial appealed from is one made by reason of the inability of the responsible official to make an informed determination within the specified time limits, the Solicitor's decision shall take into consideration any supplementary determination made by that official.

(3) In the event that a requester seeks review by a court of the denial of a request without first filing an appeal to the Solicitor as provided in this part, the Solicitor may, unless otherwise ordered by the court, consider such action as the filing of an appeal and issue a decision thereon in accordance with the provisions of this paragraph.

(4) If a decision on an appeal is not made by the Solicitor within the normal or extended period, as applicable under paragraph (c) of this section, the requester shall be deemed to have exhausted his or her administrative remedies and may seek relief as provided in 5 U.S.C. 552a(g). Processing of the appeal shall continue however, until a decision is made thereon, irrespective of whether the requester has invoked such judicial relief.

(d) *Procedure upon determination on appeal.* The Solicitor shall issue a decision in writing granting or denying the appeal, in whole or in part.

(1) *Decision to grant request.* (i) When the Solicitor determines that any portion of a prior request, which has been previously denied, should be granted, he shall indicate to the requester the extent to which he has decided to grant the previously denied request, and shall order the responsible official(s) to take the necessary action consistent with his decision.

(ii) If the Solicitor's decision provides for making available information which had been previously withheld, and the Solicitor has within his possession such information, he shall forward a copy of it to the requester together with his decision, unless the requester has indicated that he or she prefers to review the record in person, in which

case the Solicitor shall forward the record to the appropriate official who shall make the record available to the requester within 10 working days.

(iii) If the action required by the Solicitor's decision must necessarily be carried out by a responsible official other than the Solicitor, such action shall be carried out within the following time limits:

(A) If the Solicitor's decision requires a record to be made available for review without amendments thereto, such record shall be made available in the manner initially requested, except as provided in §70a.6(b)(1) (i) and (ii), within 10 working days of the Solicitor's decision.

(B) If the Solicitor's action requires the amendment of a record, the requester shall be given an opportunity to review the amended record within 15 working days of the Solicitor's decision. All previous recipients of the record, for which an accounting is required, shall be informed of the amendments immediately after the review by the requestor.

(iv) Whenever a record is to be made available to an appellant at the direction of the Solicitor, the responsible agency official shall notify the appellant when the record is available for review.

(2) *Decision to uphold denial.* Where the Solicitor determines that the denial of a request, or a portion thereof, should be upheld, the requester shall be notified: (i) Of the extent to which the denial has been upheld and the reasons therefor; (ii) of his right to file with the agency in possession of the relevant record, a memorandum setting forth the fact that such person believes the record to be erroneous and the reasons therefor; and (iii) that the decision of the Solicitor constitutes the final action by the Department of Labor for purposes of judicial review, and that the Solicitor's decision may be appealed to the District Court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the U.S. District Court for the District of Columbia.

(3) *Disclosure of record where request to amend has been denied on appeal.* Where

a request to amend a record has been denied by the Solicitor, and the requester has filed a memorandum pursuant to (d)(2)(ii) of this section taking exception to the Solicitor's decision, upon receipt of such memorandum the responsible agency official shall include the memorandum with the relevant record and, in addition, may also include with such record a memorandum indicating that a request to amend the particular record has been denied both by the agency and by the Solicitor, and the reasons therefor.

(i) In addition, previous recipients of a record, where a request to amend has been denied by the Solicitor, and of which an accounting is required by 5 U.S.C. 552a(c), shall be provided with a copy of the requester's memorandum taking exception to the Solicitor's determination, and a copy of the agency memorandum in support of the determination, if such a memorandum has been prepared.

(ii) Any subsequent disclosure of the subject record shall also be accompanied by the requester's excepting memorandum, and the Government's supportive memorandum, if one has been filed.

§70a.10 Solicitation of social security numbers.

(a) Neither the Department nor its component units shall deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security number.

(b) The requirement set forth in paragraph (a) of this section shall not apply with respect to the disclosure of a social security number to the Department, or a component unit thereof, for inclusion in systems of records which were in existence prior to January 1, 1975, and such disclosure was required by statute, Executive order or regulation adopted prior to January 1, 1975, to verify the identity of an individual.

(c) Each component unit of the Department that requests an individual to disclose his social security number shall provide the individual, in writing, with the following information:

(1) The use or uses that may be made of the social security number;